

EXHIBIT 10

WEATHERFORD DECLARATION IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)
_____)

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VIDEO DEPOSITION OF ERIC SCHMIDT

FEBRUARY 20, 2013

Reported by: Rosalie A. Kramm, CSR No. 5469, CRR

11:29:18 1 summarize for you.

11:29:21 2 BY MR. HEIMANN:

11:29:35 3 Q. When you say you were friendly with Apple, what
11:29:37 4 does that mean?

11:29:40 5 A. Well, friendly with Apple as opposed to
11:29:42 6 unfriendly with Microsoft. That would be an example of
11:29:46 7 the way I understand that.

11:29:47 8 Q. Well, that's not -- I'm sorry. That's not
11:29:49 9 clear to me.

11:29:50 10 A. Okay. Well, ask a different -- ask it in a way
11:29:52 11 that I can answer your question.

11:29:53 12 Q. Okay. What was it about the relationship
11:29:55 13 between Apple and Google that made it a friendly one?

11:29:59 14 A. Because they weren't a competitor in the way
11:30:01 15 that Microsoft was.

11:30:05 16 Q. And how was it that Microsoft was a competitor
11:30:07 17 and that Apple was not?

11:30:09 18 A. Because Microsoft was engaged in many nefarious
11:30:13 19 activities, including building a search engine to compete
11:30:16 20 with us.

11:30:17 21 Q. Why did you -- why would you consider their
11:30:20 22 building a search engine to compete with you a nefarious
11:30:25 23 activity?

11:30:25 24 A. Because Microsoft is guilty of many nefarious
11:30:29 25 activities, which is a long discussion, not particularly

11:30:31 1 relevant to this legal -- legal issue, but by this time,
11:30:36 2 Microsoft is busy building a search engine to compete
11:30:40 3 with us or either has -- has announced that they are
11:30:43 4 going to come in and kill us with products that they
11:30:45 5 haven't shipped yet, and so on and so on. They are
11:30:48 6 highly competitive during this period, and that
11:30:50 7 continues.

11:30:55 8 And I should be clear that Apple was not
11:30:57 9 building a search engine to compete with us, and search
11:31:01 10 was 98 or 99 percent of our revenue. That would be the
11:31:04 11 definition of a competitor.

11:31:08 12 Q. Well, I'm really trying to get an understanding
11:31:12 13 of this notion of friendly, because it is -- I'm sure you
11:31:14 14 appreciate it is somewhat vague.

11:31:17 15 Did you consider any company that you were not
11:31:19 16 a direct competitor with to be a friendly company?

11:31:24 17 A. No. That's not what I said.

11:31:27 18 Q. Okay. So that's why I want to get at -- what
11:31:29 19 was it about the relationship with Apple, aside from the
11:31:32 20 fact that they weren't a competitor, that made them a
11:31:34 21 friendly company?

11:31:35 22 A. Well, start with the fact that Apple was trying
11:31:37 23 to build great and beautiful products; that Apple at the
11:31:42 24 time was working on a thing called WebKit, which was the
11:31:45 25 source for Safari, which is part of an open source piece

11:31:51 1 of software which we admired. As I indicated we were
11:31:54 2 either in conversations or we had already done a search
11:31:57 3 deal with them, that would make them friendly. We were
11:32:00 4 providing search services to them. So customer, partner.

11:32:03 5 The word "friendly" here can be -- it's
11:32:06 6 deliberately vague. All right? There is no precise
11:32:09 7 definition of friend or foe. In our industry these days,
11:32:13 8 you have people who are both -- you have both
11:32:17 9 competitive -- competition and partnering within the same
11:32:20 10 firm now. That's a maturation of the industry.

11:32:24 11 Q. And when you say the term "friendly" is
11:32:26 12 deliberately vague, why is that?

11:32:28 13 A. I mean I don't define the word "friendly." I'm
11:32:31 14 just defining it how I use it.

11:32:32 15 Q. I know, but you said it was deliberately vague,
11:32:35 16 as if somebody intended it to be a vague term.

11:32:37 17 A. That is not what I meant.

11:32:38 18 Q. What did you mean, then?

11:32:40 19 A. Okay. Well, then I will not say the word
11:32:43 20 "deliberately." It doesn't have a precise meaning.

11:32:52 21 Q. Do you recall what, if anything, happened as a
11:32:55 22 result of this communication between Mr. Jobs and I think
11:33:00 23 it's Sergey Brin?

11:33:05 24 A. Well, there is -- there is subsequent
11:33:07 25 correspondence about this, but in general -- as a general

11:33:11 1 statement, we began to look very carefully at Apple
11:33:17 2 recruiting, and then I believe we stopped recruiting from
11:33:21 3 that team, and maybe from all of Apple.

11:33:25 4 Q. And when did that happen, then?

11:33:26 5 A. It would be after this, during this period.

11:33:29 6 Q. Shortly after?

11:33:30 7 A. I don't recall.

11:33:32 8 Q. Let's focus on the timing, then. The email
11:33:35 9 from Mr. Brin, assuming the date and time are correct, is
11:33:38 10 on Sunday morning, in the early morning, 1:00 o'clock.

11:33:46 11 A. I see that, yes.

11:33:47 12 Q. And he's talking about having received a call
11:33:49 13 from Mr. Jobs that very day. So either Saturday, during
11:33:54 14 the day, or -- one would guess, rather than early Sunday
11:33:58 15 morning. But in any event, right about the time that he
11:34:02 16 sends the email.

11:34:03 17 A. Okay.

11:34:03 18 Q. All right? And then Ms. Brown responds even
11:34:08 19 earlier on the day, but this time on Monday at 4:30 in
11:34:12 20 the morning, assuming that that time is correct.

11:34:15 21 A. Well, it is highly likely that Shona was not in
11:34:18 22 the same time zone to generate these time clocks, but it
11:34:22 23 is perfectly possible she was traveling when she saw it.
11:34:26 24 So those times would be California times.

11:34:27 25 Q. Okay. Well, let's go to the next exhibit,

12:06:51 1 that there is a lengthy conversation between Bill
12:06:57 2 Coughran, who is the VP of engineering, and Arnnon, who
12:07:00 3 is the HR person, recruiting person, essentially, saying,
12:07:04 4 "This person is calling us. I want to proceed." Okay?

12:07:10 5 So now with that as context, maybe we can go
12:07:14 6 back to the question of Exhibit 199 that you asked.

12:07:17 7 Q. Right. Well, I was put off by the way you
12:07:19 8 characterized this, and I just want to make sure I
12:07:22 9 understand what you were understanding Mr. Campbell to be
12:07:27 10 saying when he said, "Eric told me he got directly
12:07:31 11 involved and firmly stopped all efforts to recruit anyone
12:07:34 12 from Apple."

12:07:36 13 A. I believe that Bill meant to say, do not
12:07:41 14 cold -- stop cold calling.

12:07:43 15 Q. Fair enough.

12:07:47 16 A. And -- and Bill's message goes on to say, "When
12:07:52 17 I talked to Eric, he simply felt he would not rescind the
12:07:56 18 offer." I do not actually recall that conversation, but
12:07:58 19 I could certainly imagine I said that.

12:08:09 20 Q. Would it be fair to characterize Mr. Campbell's
12:08:12 21 efforts in this regard as efforts at peace keeping
12:08:15 22 between the two companies?

12:08:17 23 MR. MITTELSTAEDT: Objection. Argumentative.

12:08:20 24 THE WITNESS: I think that's your word. I
12:08:24 25 would characterize this as Bill is trying to increase

12:08:29 1 communications between the people, because he has good
12:08:33 2 trust relationships with me and also with Steve. So I
12:08:36 3 think he's simply trying to be helpful.

12:08:38 4 BY MR. HEIMANN:

12:08:49 5 Q. Was the agreement with Apple about no cold
12:08:58 6 calling related to any specific corroboration or joint
12:09:01 7 effort at the time?

12:09:03 8 MR. RUBIN: Collaboration, you mean?

12:09:04 9 BY MR. HEIMANN:

12:09:05 10 Q. Collaboration, I'm sorry. Thank you.

12:09:09 11 A. Well, as I indicated, I believe we had a search
12:09:11 12 deal there, and I believe that we were in -- we were
12:09:15 13 discussing the maps technology there. Apple is today a
12:09:20 14 very large customer of Google's, and until they did their
12:09:26 15 own maps a very large customer of our maps. So we also
12:09:29 16 today have an extremely detailed collaboration involving
12:09:33 17 the very team that this names, because the team that this
12:09:37 18 is referring to, which is called WebKit, is the
12:09:39 19 foundation of the Chrome browser.

12:09:43 20 So we would have certainly anticipated some of
12:09:48 21 that, but we would not have foreseen all of it. Exactly
12:09:52 22 where we were, I couldn't tell you.

12:09:54 23 Q. So back to the question, was the agreement with
12:09:55 24 Apple regarding recruiting, cold calling, related to any
12:10:00 25 specific collaboration that existed at the time?

12:10:04 1 MR. RUBIN: Objection. Asked and answered.

12:10:05 2 THE WITNESS: As I said, I believe we had a
12:10:07 3 search deal during that period, and I believe these other
12:10:10 4 collaborations were at various levels of conversation.

12:10:13 5 BY MR. HEIMANN:

12:10:13 6 Q. All right. And so was the agreement limited to
12:10:15 7 the personnel that would be relevant to those
12:10:17 8 collaborations?

12:10:18 9 MR. RUBIN: Objection. Lacks foundation as to
12:10:19 10 "agreement."

12:10:22 11 THE WITNESS: Okay. Again, without -- without
12:10:24 12 getting too hung up on like the word "agreement" and so
12:10:27 13 forth, my recollection is it was limited to this WebKit
12:10:33 14 issue initially.

12:10:36 15 BY MR. HEIMANN:

12:10:37 16 Q. And how do you square that with the exhibit
12:10:40 17 that I just showed you a moment ago, Exhibit 561?

12:10:49 18 MR. MITTELSTAEDT: Object. Argumentative.

12:10:51 19 THE WITNESS: No. I understand your question.

12:10:55 20 No, we put this in place because of the
12:10:58 21 relationship that we wanted to build starting with the
12:11:00 22 WebKit.

12:11:01 23 BY MR. HEIMANN:

12:11:02 24 Q. Are you -- is it your testimony that this
12:11:05 25 agreement that the EMG reached was limited in some

15:17:53 1 Q. When you say "good friend," you mean personal
15:17:55 2 friend?

15:17:56 3 A. Personal friend as well as -- as well as
15:17:59 4 professional friend. So my guess is that's the
15:18:06 5 providence.

15:18:06 6 Q. Aside from guessing, do you know why it's on
15:18:09 7 the list?

15:18:10 8 MR. RUBIN: Other than what he just said?

15:18:11 9 MR. HEIMANN: Well, I don't know whether what
15:18:12 10 he said was a guess or speculation or his actual
15:18:14 11 knowledge.

15:18:15 12 THE WITNESS: That's the only interaction I --
15:18:16 13 I'm trying to be thorough. That's the only interaction
15:18:20 14 that I can remember with respect to Ogilvy and WPP, but I
15:18:23 15 do remember that one.

15:18:24 16 BY MR. HEIMANN:

15:18:26 17 Q. You say you do remember, you remember what?
15:18:29 18 That they were put on the list?

15:18:30 19 A. No. I remember that Martin was upset.

15:18:32 20 Q. Martin who, again?

15:18:33 21 A. Martin Sorrell is the CEO of Ogilvy WPP.

15:18:38 22 Q. And I'm sorry, when you say "he was upset,"
15:18:40 23 upset about what?

15:18:41 24 A. The recruiting of this Andy Berndt fellow.

15:18:44 25 Q. Do you recall approximately when that occurred?

15:18:48 1 A. No, but we could get you the hiring date of
15:18:50 2 Andy Berndt?

15:19:02 3 Q. Okay. I want to move on now to a different but
15:19:09 4 related topic, and it has to do with Apple and the
15:19:12 5 agreements that Apple had, or policies as you described
15:19:14 6 them, and ask you first to take a look at Exhibit 669.

15:19:54 7 A. Okay.

15:19:58 8 Q. Exhibit 669 is an internal Apple document, as I
15:20:01 9 understand it, although it may be that it was available
15:20:05 10 on websites within Apple. You are probably more familiar
15:20:09 11 with it, I'm sure, than I am.

15:20:11 12 A. As I -- as I read this, this is a -- an
15:20:15 13 internal email in the Apple internal email system. And
15:20:19 14 it includes a document that was stored on their internal
15:20:22 15 mac os x server web. That is internal document from
15:20:30 16 Apple.

15:20:30 17 Q. All right. And it apparently lists a number of
15:20:35 18 companies that were on, at least according to the
15:20:39 19 document, Apple's do-not-call list.

15:20:42 20 A. That appears to be true.

15:20:43 21 Q. All right. As a member of the board of
15:20:46 22 directors, were you aware of the companies that Apple had
15:20:50 23 on its do-not-call list?

15:20:52 24 A. I was not.

15:20:53 25 Q. Do you know whether or not that was a topic

15:20:55 1 that was disclosed to the board of directors?

15:21:00 2 A. During the time I was on the board, we never
15:21:01 3 had such conversations.

15:21:05 4 Q. Was the board even aware -- strike that.

15:21:08 5 To your knowledge, was the board even aware
15:21:09 6 that such a list existed at Apple?

15:21:12 7 A. As I said, there was no discussion of any such
15:21:14 8 topic of any kind. Had it been discussed before I was on
15:21:19 9 the board, I wouldn't have known. So --

15:21:23 10 Q. I'm sorry?

15:21:24 11 A. It was never discussed in any meeting I was in
15:21:26 12 at Apple.

15:21:27 13 Q. Okay. Did you ever in your conversations with
15:21:29 14 Mr. Jobs talk about companies that Apple had on its
15:21:34 15 do-not-call list, aside from Google?

15:21:36 16 A. No. And -- and it may be helpful for me to say
15:21:39 17 that I was unaware of do-not-call policies in any
15:21:42 18 companies aside from Google. I mean I just -- the fact
15:21:47 19 that these existed was -- frankly this memo was quite
15:21:50 20 interesting to me.

15:21:51 21 Q. And why is that?

15:21:52 22 A. Because I didn't know these companies would be
15:21:53 23 on such a list.

15:21:58 24 Q. Did you not surmise, based upon your knowledge
15:22:03 25 of the Valley generally, that other companies like Google

15:22:07 1 would have lists similar to Google's list?

15:22:12 2 A. I never thought about it.

15:22:14 3 Q. Never crossed your mind?

15:22:15 4 A. No. It is not my problem. They're -- we try
15:22:22 5 to run our own company, not somebody else's. So --

15:22:27 6 Q. Well --

15:22:36 7 A. It is just the back division.

15:22:39 8 Q. Did you think that Google was unique in the
15:22:42 9 Valley having a list of this sort?

15:22:47 10 A. As I said, I didn't really think about it.

15:22:51 11 Because of the unique situation that was -- Google was

15:22:53 12 in, it would be perfectly reasonable from my perspective

15:22:59 13 that such lists did not exist or they had fell -- that

15:23:02 14 they had fallen off to the wayside, or what have you.

15:23:05 15 Q. And why is that?

15:23:06 16 A. Because as I indicated, during this period

15:23:09 17 Google was unusually favorable in terms of recruiting

15:23:11 18 talent, growth, press, great place to work. We were in

15:23:15 19 our golden period, if you will.

15:23:26 20 Q. And how does that relate to the notion of

15:23:29 21 thinking that Google was unique in having this list and

15:23:32 22 not knowing about any other companies similarly situated,

15:23:35 23 or being similarly situated?

15:23:40 24 A. Again, your question implies that I should have
15:23:43 25 been thinking about other companies.

16:41:10 1 I, Rosalie A. Kramm, Certified Shorthand
16:41:10 2 Reporter licensed in the State of California, License No.
16:41:10 3 5469, hereby certify that the deponent was by me first
16:41:10 4 duly sworn and the foregoing testimony was reported by me
16:41:10 5 and was thereafter transcribed with computer-aided
16:41:10 6 transcription; that the foregoing is a full, complete,
16:41:10 7 and true record of said proceedings.

16:41:10 8 I further certify that I am not of counsel or
16:41:10 9 attorney for either of any of the parties in the
16:41:10 10 foregoing proceeding and caption named or in any way
16:41:10 11 interested in the outcome of the cause in said caption.

16:41:10 12 The dismantling, unsealing, or unbinding of the
16:41:10 13 original transcript will render the reporter's
16:41:10 14 certificates null and void.

16:41:10 15 In witness whereof, I have hereunto set my hand
16:41:10 16 this day: February 23, 2013.

16:41:10 17 ___X___ Reading and Signing was requested.

16:41:10 18 _____ Reading and Signing was waived.

16:41:10 19 _____ Reading and signing was not requested.

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